



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,235	12/05/2003	Roger Thomas	P-US-PR 1112	9207

7590 08/02/2006  
Michael P. Leary  
Group Patent Counsel  
Black & Decker Corporation  
701 E. Joppa Rd., Mail Stop TW199  
Towson, MD 21286

EXAMINER

SELF, SHELLEY M

ART UNIT PAPER NUMBER

3725

DATE MAILED: 08/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/729,235

Applicant(s)

THOMAS, ROGER

Examiner

Shelley Self

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-10 and 12-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-10,12 and 13 is/are rejected.
- 7) ☒ Claim(s) 4 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/27/06.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION*****Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 27, 2006 has been entered.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Eichberger et al. (5,815,934). Eichberger disclose a planer comprising: a shoe, the shoe defining an aperture (fig. 1); a body (fig. 1) mounted on the shoe, the body defining an exhaust aperture (fig. 1), the exhaust aperture defines a first exhaust aperture and a second exhaust aperture (fig. 5), and including a wall (31, 32, 48), the wall defining a recess; a cutting drum (15) rotatably mounted within the recess (fig. 1), the drum (15) having a periphery and a portion of the periphery of the cutting drum projects through the aperture in the shoe (fig. 1); a motor (18) mounted within the body to drive the cutting drum (15); a cutting blade (col. 3, lines 18-24) mounted on the

Art Unit: 3725

periphery of the drum and adapted for cutting a work piece, the cutting action of the blade causing debris created by the cutting to be ejected from the recess (col. 4, lines 46-51); an airflow generator (11) for producing an airflow within the body (col. 4, lines 31-35); a conduit (29) defined within the body for directing the airflow; the conduit in communication with first and second exhaust apertures (fig. 1, 5) and connected to the recess for entraining and removing debris ejected from the recess (25); and a removable deflector (50; figs. 7-11) having an inner end and an outer end, the deflector (50) insertable through one of the first exhaust aperture and the second exhaust aperture and connectable to the conduit (29) for guiding the airflow and entrained debris from within the body to the outside of the body (col. 4, lines 36-45).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5-10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maier et al (DE3542263). Maier discloses a planer comprising; a shoe (12) the shoe defining an aperture (fig. 1); a body mounted on the shoe (fig. 1) the body defining an exhaust aperture (17) and including a wall, the wall defining a recess (fig. 1), a cutting drum (11) within the recess, the drum having a periphery and a portion of the periphery of the cutting drum projects through the aperture in the shoe (fig. 1); a motor, a cutting blade, an airflow generator, a conduit (23) defined within the body for directing airflow, the conduit in communication with

Art Unit: 3725

the exhaust aperture and connected to the recess for entraining and removing debris; a deflector (22), a flap (21) movable where the flap closes the exhaust aperture and to a second position where the flap does not close the exhaust aperture. Maier does not disclose the deflector to be removable. It would have been obvious at the time of the invention to one having ordinary skill in the art to construct Maier such that the deflector (22) is removable because forming in separable, i.e., removable parts what was formerly constructed as an integral structure requires only routine skill in the art. *Nerwin v. Erlicnman*, 168 USPQ 177, 179.

As to the airflow generator, it is inherent that Maier disclose an airflow generator so as to generate air to facilitate blowing of debris/chips through the chip discharge/exhaust openings (17).

With regard to claim 3, Maier discloses wherein a wall in the body also defines an expulsion aperture and the conduit (23) is connected to the recess (fig. 1) by the expulsion aperture (16) and the cutting action of the blade causes debris created by the cutting to be ejected from the recess through the expulsion aperture (16) and into the conduit substantially along a first direction and the airflow in the conduit is directed within the body to a point below the expulsion aperture and then is directed by the conduit to be blown across the expulsion aperture along a second direction the first direction of the debris and the second direction of the airflow intersect at an acute angle. Examiner notes the airflow traveling along a line, the debris/chips traveling along a second different line the two lines intersect so as to allow the airflow to blow/direct the debris out of the exhaust aperture. Because the two lines of direction intersect and supplemental angles are formed, one angle being acute and one being obtuse, thus Maier obviously discloses intersecting of the travel directions at an acute angle.

Art Unit: 3725

With regard to claims 5 and 6, Maier discloses wherein the conduit (23) directs the airflow over the deflector (22) prior to directing the airflow to the point below the expulsion aperture. Examiner notes the ability of the deflector to rotate facilitates direction airflow over the deflector prior to directing the airflow below the expulsion aperture.

As to a first and second position (clms. 7, 8), Examiner notes the flap (21) to be rotatable, thus positions are determined by the operator, i.e. the operator may stop rotation of the flap at any position within the range of rotation. Therefore having at least a first and second position.

With regard to claims 9 and 12, Maier discloses wherein the flap (21) extends from a pivot axis to side of the body (10).

With regard to claim 10, Maier discloses the flap pivotally mounted within the body and pivotably between the first and second positions.

With regard to claim 13, it is obvious in Maier that the flap be biased to a first or second position so as to adequately close either a first opening of the exhaust aperture (17) or a second opening so as to allow the debris/chips to be ejected from either side of the body via the exhaust openings (17).

#### ***Allowable Subject Matter***

Claims 4 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record does not disclose or fairly suggest the following:

Art Unit: 3725

-a planer further comprising *a spring biasing the flap to the first position* in combination with the rest of the claimed limitations as set forth in claim 14.

-a planer comprising *a nozzle located within the conduit at substantially the same height as the top portion of the expulsion aperture* in combination with the rest of the claimed limitations as set forth in claim 4.

The prior art of record, Maier as noted above, discloses a planer comprising; a shoe (12) the shoe defining an aperture (fig. 1); a body mounted on the shoe (fig. 1) the body defining an exhaust aperture (17) wherein the exhaust aperture (17) has openings to facilitate disposal/discharge of debris/chips from either side of the planer body and including a wall the wall defining a recess (fig. 1), a cutting drum (11) within the recess, the drum having a periphery and a portion of the periphery of the cutting drum projects through the aperture in the shoe (fig. 1); a motor, a cutting blade, an airflow generator, a conduit defined within the body for directing airflow, the conduit in communication with the exhaust aperture and connected to the recess for entraining and removing debris; a deflector (22) a flap (21) movable where the flap closes the exhaust aperture and to a second position where the flap does not close the exhaust aperture. Maier teaches that the deflector (22) is used in conjunction with a flap/rotatable deflection rocker (21) such that the rocker/flap can be rotated to close either a first or second side of the exhaust aperture (17) to allow debris/chips to be removed from the exhaust aperture (17). Maier does not disclose *a nozzle located within the conduit at substantially the same height as the top portion of the expulsion aperture*. Instead, Maier teaches only the deflector (22) within the conduit. Additionally, Maier does not disclose or fairly suggest *a spring biasing the flap to the first position*. Maier is silent to the use of any spring, further there is no motivation or suggestion in the

Art Unit: 3725

prior art of record to construct a planer using a *spring biasing the flap to the first position* as set forth in claim 14. Accordingly Maier fails to anticipate or render obvious the claimed invention as set forth in claims 4 and 14.

Bellew teaches a planer comprising a shoe (32), the shoe defining an aperture (fig. 5); a body (14) mounted on the shoe; the body including a wall (fig. 5) and the wall defining a recess (34); a cutting drum (28) rotatably mounted within the recess (fig. 5), the drum having a periphery and a portion of the periphery of the cutting drum projects through the aperture in the shoe (fig. 5); a motor (24) mounted within the body to rotatingly drive the cutting drum; a cutting blade (40) mounted on the periphery of the drum (28) and adapted for cutting a work piece when the drum is rotating (col. 3, lines 6-9), the cutting action of the blade causing debris (col. 3, lines 6-9) created by the cutting to be ejected from the recess; an airflow generator (26) for producing an airflow within the body (col. 3, lines 21-25); a conduit (Examiner notes the opening to deflector assembly 12 acts as a conduit) defined within the body for directing the airflow, the conduit connected to the recess (fig. 5) for entraining and removing debris created by the cutting action of the blade (28); a deflector having nozzle (12, 56; fig. 2) connectable to the planar for guiding the air flow and entrained debris from within the body to outside of the body (col. 3, lines 28-32), the deflector having an interior and exterior (fig. 2); and wherein the conduit directs the airflow from the airflow generator (26), over the deflector and is guided by the deflector to outside of the body. Bellew does not disclose any flap and instead teaches a nozzle being connected to the outside of the planar body to facilitate debris/chip removal/discharge. Bellew fails to disclose or teach *a spring biasing the flap to the first position*. Although Maier discloses a deflector and Bellew teaches a nozzle there is no motivation or suggestion combine the



Art Unit: 3725

references to create a planer including a deflector and a nozzle as set forth in claim 4.

Accordingly Bellew neither anticipates nor renders obvious the claimed invention as set forth in claims 4 and 14.

Neither the prior art of record nor any combination thereof discloses the claimed invention as set forth in claim 4. Therefore claims 4 and 14 in the same scope and containing all limitations of the parent claim(s) are deemed allowable over the prior art of record.

### ***Response to Arguments***

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is (571) 272-4524. The examiner can normally be reached Mon-Fri from 8:30am to 5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Derris Banks can be reached at (571) 272-4419. The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8300 for regular and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

Application/Control Number: 10/729,235

Page 9

Art Unit: 3725

system, see <http://pair-direct.uspto.gov>. Should you have questions on accessing the Private

PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SSelf

July 26, 2006

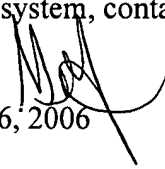
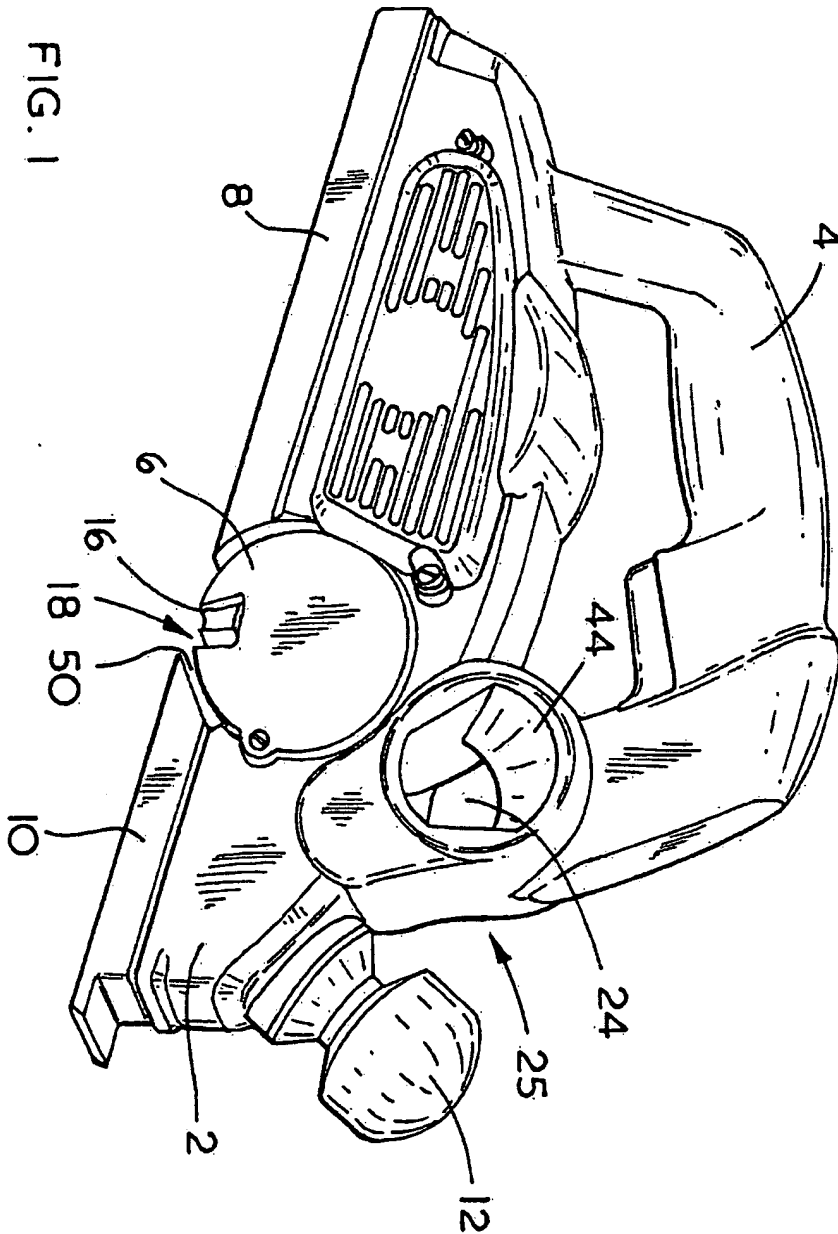




FIG. 1



Approved  
S. Sch